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Vesting of estate between death and grant of administration

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The Succession Act 1965 and Related Legislation: A Commentary

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An executor derives his or her title under the will, whereas an administrator derives his or her title solely from the grant of administration to him or her. In the case of an executor, the real and personal estate of the deceased vests in the executor immediately upon the death of the deceased, 19 although he or she holds the property upon trust for the persons by law entitled thereto. 20 A grant of probate simply confirms the authority of the executor, but will be required wherever the executor must give formal proof of his or her authority. 21

Generally speaking, the executor will not be able to complete the sale property without the production of the grant, though he or she may enter a contract for sale. Similarly, an executor may issue necessary proceedings prior to the issue of a grant but will not be able to maintain the proceedings until grant is extracted. In the case of an executor, it is settled that time under the limitation statutes runs from the date of death. 22

On the other hand, since the authority of an administrator derives from the grant of administration, the estate of the deceased vests in him or her only from this date. 23 It is to prevent a hiatus in ownership that s 13 provides that in the meantime the deceased's estate vests in the President of the High Court. This provision was previously found in s 13 of the Administration of Estates Act 1959, which in turn replaced a similar provision in s 15 of the Court of Probate (Ireland) Act 1859. It is improved here by the addition of the words 'who for this purpose shall be a corporation sole'. Where an executor renounces probate, or otherwise loses his or her right to prove the will, s 17 operates so that representation to the testator and administration of his or her estate takes effect as if that person had not been appointed executor. If there is no other surviving executor, it is not clear whether vesting of the estate pending a grant of administration will be governed by the terms of s 13 or whether the estate continues to vest in the renouncing executor.

Where the sole executor of a will is an infant, see s 32 of the 1965 Act at para [200].

**Footnotes**

<sup>19</sup> *Woolley v Clark* [1822] 5 B & Ald 744 ; *Chetty v Chetty* [1916] 1 AC 603 ; SA 1965, s 10(1).

<sup>20</sup> SA 1965, s 10(3).

<sup>21</sup> *Easton v Carter* (1850) 5 Exch 8 ; *Re Crowhurst Park* [1974] 1 WLR 583 .

<sup>22</sup> See notes to SA 1965, s 126 at para [944] *et seq*.

<sup>23</sup> See *Chetty v Chetty* [1916] 1 AC 603 at 608 and *Creed v Creed* [1913] 1 IR 48 .

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